

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO DEVELOP, OWN, AND OPERATE DEDICATED POINT-TO-POINT LIMITED TRANSMISSION FACILITIES TO CONNECT THE SMC CONSOLIDATED POWER CORPORATION (SCPC) POWER PLANT IN BARANGAY LAMAO, LIMAY, BATAAN TO THE 230 KV LAMAO SUBSTATION OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP), WITH PRAYER FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2016-015 MC

**SMC CONSOLIDATED POWER CORPORATION (SCPC),
Applicant.**

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D O C K E T E D
Date: MAR 16 2018
By: h

ORDER

Before this Commission for resolution is the *Ex Parte Manifestation and Motion (To effect minor amendments in the instant Application to conform to evidence)* (Manifestation and Motion) dated 09 August 2017, which was filed by Applicant SMC Consolidated Power Corporation (SCPC) on 14 August 2017.

ANTECEDENTS

Applicant SCPC filed on 03 June 2016 an *Application* dated 12 May 2016 for authority to develop, own, and operate dedicated point-to-point limited transmission facilities to connect the SCPC Power Plant in Barangay Lamao, Limay, Bataan to the 230 kV Lamao

Substation of the National Grid Corporation of the Philippines (NGCP).

In the Application, SCPC alleged, among others, the following:

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Statement of Facts

4. SCPC is constructing a 2 x 150 MW Circulating Fluidized Bed Coal-Fired Thermal Power Plant (the Power Plant) located in Barangay Lamao, Limay, Bataan, which is expected to be commercially operational by the 3rd quarter of calendar year 2016;

5. SCPC will be conducting the testing and commissioning of Unit 1 of the Power Plant and is expected to be synchronized to the Luzon Grid on 31 August 2016;

6. To dispatch the power to be generated by the Power Plant, SCPC is, likewise, constructing a dedicated point-to-point limited transmission facilities to connect said Power Plant to the 230 kV Lamao Substation of the NGCP;

7. SCPC is awaiting for the Department of Energy's (DOE) confirmation of its Declaration of Commerciality and subsequent issuance of a Certificate of Endorsement (COE) in order to apply for a Certificate of Compliance (COC) with the Honorable Commission;

8. The Power Plant Project is consistent with NGCP's Transmission Development Plan (TDP);

9. A System Impact Study (SIS) was prepared by CEMA Consultancy Services, Incorporated on the technical feasibility of connecting the Power Plant Project to the NGCP's 230 kV Lamao Substation;

9.1 Based on said SIS, it is possible to integrate the Power Plant Project to the Luzon Grid without major degradation to the system;

10. Description of the Connection Facilities. The two (2) existing 230 kV-designed 1 x 795 MCM ACRS BTPP-BPC transmission lines on steel poles (located at both sides of the Roman Superhighway) will be both cut in between pole nos. 25 and 26. Line 1 is energized at 230 kV while Line 2 is energized at 69 kV. The other four (4) lines will be "bused-in" to the proposed NGCP Petron Substation, where SCPC's Power Plant will also be connected directly;

10.1 Of the four (4) lines that will go in the NGCP Petron Substation, only one (1) line will remain energized at 69 kV (Petron-BPC Transmission Line 2), which will be connected to a 50 MVA 230/69 kV power transformer and will be part of the supply of the proposed NGCP Petron Substation. The rest of the lines (BTPP-Petron Transmission Lines 1 and 2, and Petron-BPC Transmission Line 1) will be energized at 230 kV; and

10.2 Even without upgrading any of the existing lines, said connection scheme will suffice for the first (1st) phase of the Power Plant Project (2 x 150 MW) as well as for the N-1 criterion;

11. **Project Cost.** The cost of the dedicated point-to-point limited transmission facilities is PhP114,412,440.75, broken down as follows:

Item	Amount, PhP
EPC of Interconnection Facility and Teleprotection Interface Between SMC AIS One Bay Breaker Substation and NGCP Lamao Switchyard/Substation	62,509,298.75
Supply, Construction, Installation, and Commissioning of 20/25 MVA, 69/13.2 kV, ONAN/ONAF, 3 PH, 60 Hz Outdoor Substation	49,107,142.00
Supply, Installation, Testing and Commissioning for 230 kV Post Insulator including necessary Steel Structure Support and Cable Clamp of 230 kV AIS One Bay Breaker	2,796,000.00
Total	114,412,440.75

12. In support of the Application, the following documents and/or information are attached hereto as annexes and made integral parts hereof:

Annex	Documents/Information
A	Description of the Project
B	Proof that the Project is Consistent with the Transmission Development Plan (TDP)
C	System Impact Study (SIS)
D	Facility Study
E	Conceptual Engineering Designs and Drawings
F	Project Cost Estimates
G	Gantt Chart Schedule
H	Connection Agreement
I	Secretary's Certificate Approving the Project
J	Environmental Certificate Compliance (ECC) issued by the Department of Environment and Natural Resources (DENR)
K	Articles of Incorporation
L	Certificate of Registration issued by the Securities and Exchange Commission (SEC)
M	Latest General Information Sheet (GIS)

N	Certificate of Registration with the Board of Investments (BOI)
O	Latest Audited Financial Statements (AFS)
P	Judicial Affidavit in support of the motion for provisional authority

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The Commission issued an *Order* with a *Notice of Public Hearing* both dated 19 July 2016, setting the case for jurisdictional hearing, expository presentation, pre-trial conference, and evidentiary hearing on 14 September 2016.

During the 14 September 2016 hearing, Applicant SCPC was able to show proof of its compliance with the publication and notice requirements of the Commission. Expository presentation, pre-trial conference, and evidentiary hearing were also concluded.

On 04 August 2017, SCPC filed its *Formal Offer of Evidence* (FOE).

On 14 August 2017, SCPC filed the subject *Manifestation and Motion*, as well as a *Supplemental FOE*.

In the said *Manifestation and Motion*, SCPC alleged the following:

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2. SCPC submitted the following documents in support of its Application and to prove, among others, that the requisite permits, licenses, certificates and studies were duly complied with, albeit the Application mentioned only its intention to connect a 2 x 150 MW Power Plant to the NGCP Substation, thus:

- a. System Impact Study which was undertaken for SCPC by CEMA Consultancy Services, Inc. for the construction of a 4 x 150 MW SMC Consolidated Power Corporation Coal Power Plant attached as Annex "C" of the Application;
- b. Facilities Study on the Transmission Interconnection of SMC Consolidated Power Corporation's 4 x 150 MW Circulating Fluidized Bed ("CFB") Coal-Fired Power Plant undertaken by Eagle Engineering Solutions Corporation for SCPC attached as Annex "D" of the Application;
- c. Conceptual Engineering Designs and Drawings for Units 1 to 4 of the 4 x 150 MW Coal-Fired Power Plant made for

SCPC by Formosa Heavy Industries, Inc. attached as Annex "E" of the Application;

- d. The document entitled "Connection Agreement Between NGCP and SMCCPC (4 x 150 MW Limay Coal-Fired Power Plant)" attached as Annex "H" to the Application; and,
- e. Environmental Compliance Certificate ("ECC") issued by the Department of Environment and Natural Resources (DENR) on September 17, 2013 for the 600 MW Power Plant Project attached as Annex "J" of the Application;

3. Gleaned from the foregoing, it is clear that SPDC's original plan and intention was to construct a 4 x 150 MW Power Plant or an aggregate of 600 MW power plant which it intends to connect, subject to the Honorable Commission's approval, to the 230 KV NGCP Substation;

4. In the interim, while the Honorable Commission is in the process of evaluating SCPC's Application, the Board of Investments (the "BOI") approved the transfer of ownership of Limay Premiere Power Corp. ("LPPC") 2 x 150 MW Power Plant assets to SCPC, the same only adjacent to and situated within the area of the Power Plant of SCPC. Furthermore, SCPC and LPPC are both subsidiaries of SMC Global Power Holdings Corp.. **A copy of the BOI's letter dated 14th June 2017** which approved the transfer as mentioned is hereby attached as **Annex "A"**. Corollary thereto, the following documents are likewise attached to wit:

- a. **The Revised Description of the Power Plant** attached as **Annex "B"**; and,
- b. **The Revised Gantt Chart** attached as **Annex "C"**.

5. The transfer of LPPC's assets to herein applicant SCPC as registered in the BOI established the latter as an "Expanding Operator" of LPPC's previously owned 2 x 150 MW Power Plant. Such transfer made SCPC's BOI Registration No. 2016-188 a certificate which now covers a 4 x 150 MW Power Plant or an aggregate of 600 MW Power Plant which is also located within the same site, and to reiterate, in Barangay Lamao, Limay, Bataan;

6. Section 3 of the ERC Rules of Practice and Procedure provides:

"Section 3. Amendment to Conform to the Evidence.
– *When, at a hearing, issues not raised by the pleadings are introduced by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these new issues may be made upon motion of any party at any time during or after the hearing. If evidence*

upon new issues is objected to on the ground that it is not within the issues raised in the pleadings, the Commission may allow the amendment of pleadings and such evidence to be received, when it appears that the presentation of the merits of the proceeding will be served thereby without prejudicing the public interest or the rights of any party.”

7. Guided by the preceding, SCPC hereby moves for the minor amendment of the following portions of its Application to conform to the evidences presented in this case, thus:

- a. Item No. 4, page two (2) which will now read as --- *“SCPC is constructing a 4 x 150 MW Circulating Fluidized Bed Coal-Fired Thermal Power Plant (the “Power Plant”) located in Barangay Lamao, Limay, Bataan, which is expected to be commercially operational by the 4th quarter of calendar year 2016.”;*
- b. Item No. 10, page three (3) which will now read as --- *“Description of the Connection Facilities. The connection for the project involves construction of approximately 850 meters transmission line, upgrading at NGCP’s BCCPP-B S/S and construction of new 230 kV substation at SCPC – Limay, Bataan. The project’s power injection to the grid is via Bus In connection to the existing 230 kV GN Transmission Line. SCPC will connect to the grid via the new Lamao SS of NGCP. Included in this project are the HV connection, telecommunication and protection interconnection needed in both substation.”;*
- c. Item No. 10.1, page three (3) which will now read as – *“Identified major components of the connection facility project are the following: approx. 100 m, 230 kV line from SCPC’s On Bay Breaker to the designated connection point in NGCP’s New Lamao SS, including steel poles, cables, OPGW, OHGW, insulators and accessories, Telecommunication and protection interface and SCADA interface.”;*
- d. Item No. 10.2, page four (4) which will now read as - - *“Even without upgrading any of the existing lines, said connection scheme will suffice for the first (1st) phase of the Power Plant Project (2 x 150 MW) as well as for the N-1 criterion; And for the second (2nd) phase of the Power Plant Project (2 x 150 MW), System Integrity Protections Scheme (SIPS) will be implemented.”*

8. Corollary to the preceding minor amendments, SCPC respectfully manifests that the cost of the dedicated point-to-point limited transmission facilities appearing on Item No. 11, page four (4) of the Application is hereby submitted to be updated as follows:

ITEM	AMOUNT (PhP)
EPC of Interconnection Facility and Teleprotection Interface Between SMC AIS One Bay Breaker Substation and NGCP Lamao Switchyard/Substation	62,509,298.75
<i>Additional Works for Unit 3 & Unit 4, and NGCP Lamao Substation Interconnection Project</i>	20,000,000.00
Supply, Installation, Testing and Commissioning for 230 kV Post Insulator including necessary Steel Structure Support and Cable Clamp of 230 kV AIS One Bay Breaker	2,796,000.00
Total	PhP85,305,298.75

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Thus, SCPC prayed for the following, *to wit*:

1. This Manifestation and Motion be duly NOTED and ADOPTED as part of the records of the instant Application and in the favourable evaluation thereof; and
2. After due deliberation, a Decision be issued APPROVING the Application and permanently AUTHORIZING the development, ownership and operation of the 4 x 150 MW point-to-point limited transmission facilities of SCPC.

ISSUE

The issue for the Commission's resolution is whether or not to allow the adoption of the amendments in the *Manifestation and Motion* to the instant Application to conform to evidence.

THE COMMISSION'S RULING

The Commission hereby resolves to deny the adoption of amendments to conform to evidence pursuant to Section 3, Rule 7 of the ERC's Rules of Practice and Procedure (RPP). However, amendment to the Application will be allowed on the basis of Section 1, Rule 7 of the RPP which will require republication of notice of hearing on the amended application.

DISCUSSION

Amendments of pleadings and supplemental pleadings in cases filed before the Commission are covered by Rule 7 of the RPP. There are three scenarios laid down in the said Rule and how these amendments in such cases are to be treated: (1) if the amendment will substantially enlarge or modify an application or petition, covered by Section 1¹; (2) amendment to be made before a responsive pleading is filed, covered by Section 2²; and (3) amendments to conform to the evidence under Section 3³.

In the instant case, Applicant SCPC applied Section 3 of Rule 7 covering amendments to conform to evidence. Admitting that the Application mentioned only its intention to connect a 2 x 150 MW Power Plant to the NGCP Substation, SCPC offered the following documents in support of its application which were referring to a 4 x 150 MW Power Plant⁴:

- a) System Impact Study;
- b) Facilities Study;
- c) Conceptual Engineering Designs and Drawings;
- d) Connection Agreement; and
- e) Environmental Compliance Certificate.

¹ Section 1. *Amendments of Pleadings and Supplemental Pleadings.* – Before a pleading can be amended or supplemented, the pleader shall file a motion for leave attaching therewith the proposed amended or supplemental pleading. Except as provided in the following section, such leave to amend will be allowed or denied by the Commission as a matter of discretion.

If the amendment will substantially enlarge or modify an application or petition, the Commission, after granting leave, shall require applicant or petitioner to comply with the requirements in Rule 6, if the application or petition is covered by said rule, and to republish the notice of hearing on the amended application or petition.

² Section 2. *Amendments of Complaints and Petition.* – Complaints may be amended once as a matter of right before the respondent files a responsive pleading thereto. The same rule applies to petitions which implead a respondent. After the filing of such responsive pleading, amendments of pleadings or the filing of supplemental pleadings may be made only upon leave of the Commission.

³ Section 3. *Amendments to Conform to the Evidence.* – When, at a hearing, issues not raised by the pleadings are introduced by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these new issues may be made upon motion of any party at any time during or after the hearing. If evidence upon new issues is objected to on the ground that it is not within the issues raised in the pleadings, the Commission may allow the amendment of pleadings and such evidence to be received, when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of any party.

⁴ Allegation No. 2 in the Ex Parte Manifestation and Motion (To effect minor amendments in the instant Application to conform to evidence) filed on 14 August 2017.

It must be noted that before the *Manifestation and Motion* was filed, all the stages of the proceedings have been concluded and exhibits were formally offered by Applicant on the original application, which is for the development, ownership, and operation of a dedicated point-to-point limited transmission facilities to connect the 2 x 150 MW Power Plant to the NGCP Substation.

Section 3 of Rule 7 contemplates a scenario when issues not raised by the pleadings are introduced during the hearing. In such cases, amendment of the pleadings may be made as may be necessary to cause them to conform to the evidence. This is not the case in the instant Application.

In the case at hand, there are no new issues raised during the hearing that needs amendments on the pleadings. SCPC is proposing to amend what was originally applied for on the basis of the Board of Investments (BOI)'s approval of the transfer of ownership of another 2 x 150 MW Power Plant, thus amending the applied 2 x 150 MW into a 4 x 150 MW Power Plant, to include the newly transferred power plants in the application of the point-to-point limited transmission facilities for connection to the substation.

The amendments proposed by SCPC after the FOE was filed will substantially enlarge and modify the application. What was presented during the hearing and testified by the witness in support of the application refer to a 2 x 150 MW and not a 4 x 150 MW plant.

The documents attached in the application referring to studies and agreements covering a 4 x 150 MW power plant only show that the applied 2 x 150 MW is within the coverage of the studies and agreements submitted as required by the Commission in support of the application. However, the application itself refers only to the 2 units and the transfer of another 2 units came in only after the hearing on the original application was concluded.

The subsequent amendment on the number of units of the plant will substantially modify the originally applied subject matter. Consequently, the applicable provision in Rule 7 of the RPP is Section 1 and not Section 3.

The paragraphs in Section 1 provide that "if the amendment will substantially enlarge or modify the application, the Commission, after granting leave, shall require the Applicant to republish the notice of

hearing on the amended application.” Thus, another hearing on the amended application is required and a new notice of hearing for republication is necessary. Essentially, the amended application needs to be heard publicly.

IN VIEW OF THE FOREGOING, the motion of Applicant SMC Consolidated Power Corporation (SCPC) to adopt the amendments in the application to conform to evidence is hereby **DENIED**. SCPC is directed to amend the Application and republish another notice of hearing on the amended application pursuant to Section 1, Rule 7 of the ERC’s Rules of Practice and Procedure.

SO ORDERED.

Pasig City, 26 February 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

LS: /CLS/APV

Copy furnished:

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